

# DOSTER LAW OFFICES, PLLC

2145 Commons Parkway  
Okemos, MI 48864

Eric E. Doster  
Email: [eric@ericdoster.com](mailto:eric@ericdoster.com)

(517) 483-2296 (main)  
(517) 977-0147 (direct)  
[www.ericdoster.com](http://www.ericdoster.com)

June 14, 2016

Federal Election Commission  
Office of Complaints Examination  
and Legal Administration  
Attn: Donna Rawls, Paralegal  
999 E. Street, NW  
Washington, DC 20436

*By Email Transmission Only*  
*[drawls@sec.gov](mailto:drawls@sec.gov)*  
*[jjordan@sec.gov](mailto:jjordan@sec.gov)*

***Re: MUR 7071; Response of Mike Bishop for Congress and Valerie Tillstrom, Treasurer (collectively, the "Committee")***

Dear Ms. Rawls:

## INTRODUCTION

This office represents the above-referenced Committee,<sup>1</sup> which has received a complaint (the "Complaint") designated Matter Under Review (MUR) 7071 by the Federal Election Commission (the "Commission"). This letter responds to the Complaint filed with the Commission on or about May 19, 2016 by Courtney White, which alleges that the Committee violated 52 U.S.C. 30120(a) and 11 C.F.R. 110.11(b) by failing to include "any disclaimer" on "their contribution page" at "[www.rally.org](http://www.rally.org)."<sup>2</sup>

The Complaint represents a desperate attempt to create a violation based on form over substance. As the Complaint itself acknowledges, a March 29, 2016 email (the "Email") from the Committee solicited contributions.<sup>3</sup> The Email contained a proper disclaimer "printed in a box"<sup>4</sup> and clearly indicated that the Email was paid for by the Committee. Consequently, not even the Complaint alleges any impropriety with respect to the Email portion of this message. Instead, the Complaint

<sup>1</sup> Please see the attached Statements of Designation of Counsel signed by Mike Bishop for Congress, and Valerie Tillstrom in her official capacity as Treasurer for Mike Bishop for Congress.

<sup>2</sup> See Complaint, page 3.

<sup>3</sup> See Complaint, page 2; Complaint, Exhibit A.

<sup>4</sup> See 11 C.F.R. 110.11(c)(2)(ii).

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focuses on the Committee's fundraising webpage on [www.rally.org](http://www.rally.org) (the "Rally Webpage") which, as a practical matter, was only available to the general public after first reviewing the Email. The Rally Webpage,<sup>5</sup> which is contained on a third party's website as a free service, is captioned "Mike Bishop for Congress" and clearly states that the Rally Webpage is "Created by Mike Bishop for Congress" in a "printed box set apart from the other contents of the communication."<sup>6</sup> Therefore, the Complaint's allegation that the Committee was "misleading the public about who paid for their webpage"<sup>7</sup> boils down to the use of the word "created" instead of "paid for" on the Rally Webpage.

Again, the Rally Webpage is offered to the Committee as a free service on a third party's website, and which, as a practical matter, is only available to the general public after first reviewing the Email (which did contain the "Paid for by" disclaimer in a printed box set apart from the other contents of the communication). Accordingly, the reality of this situation is that no one has been misled about the Committee's responsibility for the Rally Webpage.

As illustrated by this letter, the Complaint's technical "form over substance" allegation is, in itself, not technically correct. Moreover, even where the Commission has acknowledged a technical violation of the disclaimer requirements of the Federal Election Campaign Act<sup>8</sup> and Commission regulations, the Commission exercises its prosecutorial discretion to focus on legitimate campaign finance violations, and takes no further action. In the present case, the Commission should find that there is no reason to believe that the Committee violated 52 U.S.C. 30120(a) or 11 C.F.R. 110.11(b).

### **FACTUAL AND LEGAL ANALYSIS**

The Federal Election Campaign Act and Commission regulations require political committees to post disclaimers on certain communications.<sup>9</sup> Included in the scope of this disclaimer requirement are: (1) all public communications by political committees; and (2) all internet websites of political committees available to the general public.<sup>10</sup>

#### **1. The Committee's Rally Webpage is Not a "Public Communication"**

The Rally Webpage does not fall in the first category referenced above because the Rally Webpage does not constitute a "public communication." Internet communications are regulated "public communications" only when they are "placed for a fee on another person's Web site."<sup>11</sup> The Rally Webpage is a free service of Rally.org, which does not charge users to create accounts or display profiles.<sup>12</sup> Although there is a donation processing fee, this is a separate service. Significantly,

<sup>5</sup> See Complaint, Exhibit B.

<sup>6</sup> See 11 C.F.R. 110.11(c)(2)(ii).

<sup>7</sup> See Complaint, page 3.

<sup>8</sup> 52 U.S.C. 30101 et. seq.

<sup>9</sup> See 52 U.S.C. 30120(a)(1); 11 C.F.R. 110.11(a)-(b).

<sup>10</sup> See 11 C.F.R. 110.11(a)(1).

<sup>11</sup> See 11 C.F.R. 100.26.

<sup>12</sup> See <https://rally.org/corp/online-fundraising-tips>.

there is no fee to create the Rally Webpage on the website, www.rally.org. The Complaint does not allege, and the information available in the record does not suggest, that the Rally Webpage was placed on www.rally.org for a fee. Consequently, as a free communication on www.rally.org, the Rally Webpage is not a "public communication" under 11 C.F.R. 100.26.

2. The Rally Webpage is not a Committee "Website" of a Political Committee for Purposes of the Disclaimer Requirement

The Complaint alleges that the Rally Webpage should be treated as a website under 11 C.F.R. 110.11(a) because it is available to the general public.<sup>13</sup> However, as recognized by the Commission's Office of the General Counsel:<sup>14</sup>

"But section 110.11(a)(1) applies not to all websites 'available to the public,' but to such websites that are websites 'of political committees.'"

As observed by the Commission's Office of the General Counsel,<sup>15</sup> while website users like the Committee create its "own" account, pages, profiles, or spaces - like the Rally Webpage in this matter -- the Rally Webpage is placed on a single webpage: www.rally.org.<sup>16</sup> Rally.org, in turn, creates, pays for, and maintains the right to discontinue or cease operation of that website at any time, for any reason, or none at all.<sup>17</sup> Rally.org controls the terms by which users may access the website.<sup>18</sup> Moreover, Rally.org retains its ownership interest in the website and underlying software, while merely granting users a license to use that website, software, and other Rally.org services.<sup>19</sup>

Therefore, when the Committee created the Rally Webpage on the Rally.org website of www.rally.org, the Committee was not creating its own website. Accordingly, the Rally Webpage does not constitute a website of the Committee for purposes of the disclaimer requirement.<sup>20</sup> Because the Complaint depends entirely on the assertion that the Rally Webpage is a website of the Committee - and this assertion is false - the Complaint must be dismissed for this reason alone.

<sup>13</sup> See Complaint, pages 2-3.

<sup>14</sup> See MUR 6911 (Lois Frankel for Congress, et al.), First General Counsel's Report, page 4.

<sup>15</sup> See *id.*

<sup>16</sup> See Rally User Agreement Terms of Services (last updated: April 12, 2013), available at <https://rally.org/corp/eula>.

<sup>17</sup> See *id.*, Section 6.

<sup>18</sup> See *id.*

<sup>19</sup> See *id.*

<sup>20</sup> See MUR 6911 (Lois Frankel for Congress, et al.).

3. Any Reasonable Member of the Public Reviewing the Rally Webpage Completely Understood that the Committee is Responsible for the Rally Webpage

According to the Complaint:<sup>21</sup>

“Disclaimers are required under the Act to keep the public informed and to hold campaigns accountable.”

Based on the fact that the Rally Webpage is captioned “Mike Bishop for Congress” and states in a printed box set apart from the other contents of the communication that the Rally Webpage was “Created by Mike Bishop for Congress” -- how can any reasonable member of the public seriously question that the Committee is the entity responsible for the Rally Webpage?

Again, the Complaint’s technical argument is that the use of the word “created” instead of “paid for” in the printed box does not comply with the Federal Election Campaign Act and Commission regulations as a technical matter; however, it must be noted that the phrase “paid for by” is not the only mandated phrase allowed under the Federal Election Campaign Act and the Commission regulations.<sup>22</sup> In other words, the Commission’s regulations allow any similarly descriptive phrase, such as “created,” to be utilized to indicate the name of the person who financed the communication.

Moreover, it must be emphasized that the Rally Webpage was, as a practical matter, “available to the general public” only after the reader reviewed the Email, which did contain a “paid for by” disclaimer in a printed box. Therefore, whether or not the Email is properly considered to be one and the same communication as the Rally Webpage, it defies logic to suggest that any member of the general public has been misled about the Committee’s responsibility for the Rally Webpage.

4. Even if the Complaint’s “Form Over Substance” Allegation is 100% Correct (Which it Certainly is Not), Then the Commission Should Still Dismiss the Allegations with Respect to the Rally Webpage

As indicated in this letter, neither the Federal Election Campaign Act nor the Commission regulations require the Rally Webpage to contain a disclaimer. Moreover, even if a disclaimer was required for the Rally Webpage, the fact that the Rally Webpage stated that it was “created” by the Committee and that the Rally Webpage, as a practical matter, was available to the general public only after reviewing the Email, then the non-existent disclaimer requirement was still satisfied in the present case.

Nonetheless, once it was made aware of the Complaint in this matter - and even ignoring the fact that the Rally Webpage is not required to have a disclaimer - the Committee has added a disclaimer

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<sup>21</sup> See Complaint, page 3.

<sup>22</sup> See 11 C.F.R. 110.11(b)(1).

to the Rally Webpage stating "Paid for by Mike Bishop for Congress."<sup>23</sup> The Committee's action here should be dispositive because even where a disclaimer is legally required, the Commission dismisses matters where remedial action is taken.<sup>24</sup>

"Because the website contains some identifying information, and because the Committee took remedial action to ensure the website had proper disclaimers, here the Commission dismisses the allegations with respect to the website."

Accordingly, even if the Complaint's "form over substance" allegation is 100% correct (which it certainly is not), then the Commission should adhere to its established practice to dismiss this matter based on the good faith and voluntary remedial action already taken by the Committee.

### CONCLUSION

For all of the foregoing reasons, the Commission should find no reason to believe a violation occurred. The Complaint should be promptly dismissed and the file closed.

Sincerely,

DOSTER LAW OFFICES, PLLC



Eric Doster

ED/sjm

Enclosures

CC: Jeff S. Jordan (by email transmission: jjordan@fec.gov)

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<sup>23</sup> See <https://rally.org/covers/b9PEeeJfoN5/contribute>.

<sup>24</sup> See MUR 6665 (Alex Pires for U.S. Senate), Factual and Legal Analysis, page 6. See also, MUR 6770 (David Hale), Factual and Legal Analysis; MUR 4957 (Buchanan Reform, Inc.), First General Counsel's Report, pages 6-7; MUR 6842 (Scaturro), Factual and Legal Analysis, pages 5-6.



FEDERAL ELECTION COMMISSION  
999 E Street, NW  
Washington, DC 20463

# STATEMENT OF DESIGNATION OF COUNSEL

Provide one form for each Respondent/Witness

FAX 202-219-3923

MUR # 7071

Name of Counsel: Eric Doster

Firm: Doster Law Offices

Address: 2145 Commons Parkway  
Okemos, MI 48864

Telephone: 517-977-0147 Fax: -

E-mail: eric@ericdoster.com

The above-named individual and/or firm is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

6-3-16  
Date

[Signature]  
Signature (Respondent/Agent)

Treasurer  
Title

RESPONDENT: Mike Bishop for Congress  
(Committee Name/ Company Name/Individual Named in Notification Letter)

Mailing Address: PO Box 1148  
(Please Print)

Brighton, MI 48816

Telephone (H): \_\_\_\_\_ (W): 517-292-3118

E-mail: val@electmikebishop.com

This form relates to a Federal Election Commission matter that is subject to the confidentiality provisions of 52 U.S.C. § 30109(a)(12)(A). This section prohibits making public any notification or investigation conducted by Federal Election Commission without the express written consent of the person under investigation.



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FAX 202-219-3923

MUR # 7071

Name of Counsel: Eric Doster

Firm: Doster Law Offices

Address: 2145 Commons Parkway  
Okemos, MI 48864

Telephone: 517-972-0147 Fax: —

E-mail: eric@ericdoster.com

The above-named individual and/or firm is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

6-3-16  
Date

[Signature]  
Signature (Respondent/Agent)

Treasurer  
Title

RESPONDENT: Valerie Tillstrom, Treasurer  
(Committee Name/ Company Name/Individual Named in Notification Letter)

Mailing Address: PO Box 1148  
(Please Print)  
Brighton, MI 48816

Telephone (H): \_\_\_\_\_ (W): 517-292-3118

E-mail: val@electmikebishop.com

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